

REMARKS

A. Substance of Interview

On April 12, 2006, an Interview Summary was mailed indicating that a telephonic interview was held between Examiner Jason M. Borlinghaus and David Okey. The Interview Summary indicated that Mr. Okey and Examiner Borlinghaus discussed Kotler. In addition, Mr. Okey requested missing pages of Kotler. The Interview Summary indicated that the missing pages were faxed to Mr. Okey.

The Interview Summary indicated that a substance of the April 12th interview be provided. Since Mr. Okey is no longer a member of the undersigned's firm, providing a substance of the interview is not possible. The undersigned will assume that the Interview Summary is accurate in describing the substance of the interview.

B. 35 U.S.C. § 103

- 1. Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend and Weerahandi**
 - a. Claims 1-7, 9 and 10**

In the Office Action of March 13, 2006, claims 1-7, 9 and 10 were rejected under 35 U.S.C. § 103 as being obvious in view of Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend and Weerahandi. Applicants traverse this rejection for various reasons. In particular, independent claim 1 recites "accepting user-specific input into a computer relating to an existing wireless communications service and the enhanced wireless communications service." The Office Action asserts that Kotler discloses the accepting of a user-specific input related to existing and new products or services at pages 110-114. A review of the pages reveals that there is no disclosure of inputting of data related to both existing and new products/services in a single method. Since there is no suggestion in Kotler or the prior art to alter Kotler to accept

user-specific input related to both existing and new products or services in a single method, the rejection is improper and should be withdrawn.

The rejection is improper for the additional reason that Kotler fails to disclose a user-specific input that includes a wireless application supported by an enhanced wireless communications service. The Office Action has conceded this. The Office Action appears to be asserting at pages 5 and 6 that Applicants' specification makes statements regarding the prior art that suggests altering Kotler to include the recited wireless application. A review of Applicants' specification, including pages 1-4, does not reveal such prior art. Regarding pages 1-4 of Applicants' specification, it refers to the case where there is an existing wireless communications service and contemplates what economic issues must be contemplated if it is decided to employ an enhanced wireless communications service in the future. There is no mention of inputting a wireless application selection. Accordingly, the rejection is improper and should be withdrawn.

The rejection is improper for the additional reason that Kotler fails to access a reference database that includes cost data values associated with an enhanced wireless communications service and a revenue data value associated with an existing wireless communications service. The Office Action relies on pages 281, 305-309 and 320 of Kotler as suggesting such accessing. A review of the pages reveals that Kotler is silent as to accessing a reference database that includes data associated with both existing and enhanced communications services. The Office Action at page 7 refers to Applicants' Specification as disclosing prior art that suggests accessing a reference database that includes data associated with both existing and enhanced communications services. Reviewing pages 1-4 of Applicants' Specification only reveals Applicants describing the situation where a party contemplates replacing an existing wireless communications service with an enhanced one. Such contemplation is not prior art. Assuming

for arguments sake that it did qualify as prior art, pages 1-4 do not disclose accessing from a reference database data that is associated with existing and enhanced wireless communications services. Since there is no motivation in the prior art or in Kotler itself to alter Kotler to access a reference database that includes cost data values associated with an enhanced wireless communications service and a revenue data value associated with an existing wireless communications service, the rejection is improper and should be withdrawn.

It is noted that the Office Action at page 6 has stated that:

It would have been obvious to one of ordinary skill in the art . . . to have modified Kotler to allow for application of standard marketing and business analysis methodology to any product or service that the inventor desired, such as basic wireless services, enhanced wireless services.

Applicants traverse the above statement in that it is vague and has no basis in the law. First, the statement refers to “standard marketing and business analysis methodology.” It is unclear what that phrase encompasses and how the phrase teaches how to alter Kotler. This vagueness is unfair to Applicants. Second, the standard for modifying Kotler is not what is standard in the art, but what is suggested by the prior art. As mentioned above, there is no suggestion in the prior art to alter Kotler to access a reference database that includes cost data values associated with an enhanced wireless communications service and a revenue data value associated with an existing wireless communications service, standard adoption curve. Without such motivation, the rejection is improper. The Office Action’s citation of *In re Kuhle*, 526 F.2d 553, 188 USPQ 7, (CCPA 1975) does not offer anything that contradicts Applicants’ position. Indeed, it is unclear why the case is being cited in the first place. Applicants would like clarification on this point. Since there is no motivation to alter Kotler to access a reference database in the manner recited above, the rejection should be withdrawn.

The rejection is improper for the additional reason that Kotler et al. fails to disclose adjusting a standard adoption curve to obtain an adjusted adoption curve. The Office Action has asserted that pages 156-159 and FIGS. 5-7 of Kotler disclose the recited standard adoption curve. The Office Action further concedes that Kotler does not disclose adjusting a standard adoption curve. The Office Action has asserted that Mahajan and Bohlin disclose that “the rate of adoption of any two products may differ from the standard adoption curve.” A review of page 8 of Mahajan reveals that the diffusion patterns of innovations, such as radioisotopes and computer applications, may differ. However, there is no discussion of a standard adoption curve or its adjustment.

Regarding Bohlin, it discusses at page 15 that models of consumer adoption may follow Gomperz and Fisher Pry curves. Bohlin discloses that the data does not perfectly fit the curves. Again, there is no disclosure of a standard adoption curve or its adjustment.

The Office Action asserts that Weerahandi discusses the use of adoption curves to forecast demand for products and services. As pointed out in Applicants’ Response filed on December 8, 2005, Weerahandi does not use adoption curves regarding “enhanced” services. Furthermore, Weerahandi does not disclose nor suggest altering a standard adoption curve.

The Office Action asserts that adjustment of a standard adoption curve would have been obvious in view of Dorf and Porter. Regarding Dorf, the Office Action asserts that “Dorf states that the adoption curve is merely a theoretical model which ‘oversimplifies a complex reality.’” This is technically incorrect. Dorf states that “[a]ny theoretical model of social process oversimplifies a complex reality.” Furthermore, Dorf does not disclose nor suggest adjusting a standard adoption curve.

Porter also does not disclose nor suggest adjusting a standard adoption curve.

It should be noted that the curve of FIGS. 5-7 of Kotler regards adopter categorization on the basis of relative time. Assuming for arguments sake that the curve is a standard adoption curve, it appears that the references Mahajan, Bohlin, Dorf and Porter do not disclose such a curve and so there is no motivation to adjust the curve of FIGS. 5-7. Since no reference cited in the Office Action discloses or suggests altering Kotler to adjust a standard adoption curve, the rejection is improper and should be withdrawn.

The rejection of claim 1 is improper for the additional reason that Kotler fails to disclose estimating a potential revenue value by generating a revenue estimate based on an adjusted adoption curve. As mentioned above, Kotler and the prior art do not disclose nor suggest having Kotler adjust a standard adoption curve. It follows that Kotler and the prior art do not suggest altering Kotler to generate a revenue estimate based on an adjusted adoption curve.

It is noted that the Office Action has cited Townsend in the rejection. Since this reference does not cure the above mentioned deficiencies of Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Weerahandi and Mahajan, the rejections are improper and should be withdrawn.

It is noted that the Office Action on page 6 asserts that it would have been obvious to automate the method of Kotler. Applicants traverse the assertion in that claim 1 is silent as to automating the method.

For the above reasons, claim 1 is not rendered obvious by Kotler and the other cited art and so the rejection is improper and should be withdrawn.

The rejections of claims 2-7 are improper for the additional reason that none of the references discloses or suggests the various ways of adjusting the standard adoption curve as recited in the claims. The Office Action recites Mahajan, Bohlin, Dorf and Porter for disclosing the recited ways of adjusting. However, a review of each reference does not reveal any

adjustment of a standard adoption curve. Since there is no suggestion in either Mahajan, Bohlin, Dorf or Porter to alter Kotler to adjust a standard adoption curve in the manner recited in claims 2-7, the rejections of the claims are improper and should be withdrawn.

The rejections of claims 9 and 10 are improper. Claims 9 and 10 recite additional limitations concerning estimating revenue (claim 9) or cost (claim 10) within a geographic region. The Office Action has not recited one reference for the proposition of estimating revenue or cost within a geographical region. Accordingly, the rejection is improper. In addition, the claims recite making their estimation based on the adjusted adoption curve. As mentioned above, none of the references discloses or suggests using an adjusted adoption curve. Without such suggestion, the rejection is improper and should be withdrawn.

Note that claim 1 has been amended to delete “the steps of” and replace “communication” with “communications.” Since the amendments either broaden the claim or correct obvious typographical errors, the scope of the claim under the doctrine of equivalents are unaffected or the amendments are not related to patentability per *Festo Corporation v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd*, 234 F.3d 558, 56 USPQ2d 1865 (Fed. Cir. 2000) (*en banc*), *overruled in part*, 535 U.S. 722 (2002).

To the extent that the amendments to claims 2-7, 9 and 10 broaden the claims, the scope of the claims under the doctrine of equivalents is unaffected per *Festo*.

b. Claims 17-23, 25 and 26

Claims 17-23, 25 and 26 were rejected under 35 U.S.C. § 103 as being obvious in view of Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend and Weerahandi. Applicants traverses this rejection for various reasons. In particular, independent claim 17 recites a user input interface “for accepting user-specific input relating to an existing wireless

communications service and the enhanced wireless communications service.” As pointed out above in Section B.1.a, Kotler does not disclose inputting of data related to both existing and new products/services in a single method. Since there is no suggestion in Kotler or the prior art to alter Kotler to have a user input interface accept user-specific input related to both existing and new products or services in a single method, the rejection is improper and should be withdrawn.

For reasons similar to those given above in Section B.1.a, the rejection is improper for the additional reason that Kotler fails to disclose a user-specific input that includes a wireless application supported by an enhanced wireless communications service as recited in claim 17.

The rejection is improper for the additional reason that Kotler fails to use an estimator that accesses a reference database that includes cost data values associated with an enhanced wireless communications service and a revenue data value associated with an existing wireless communications service. The Office Action relies on pages 281, 305-309 and 320 of Kotler as suggesting such accessing. As pointed out above in Section B.1.a, Kotler is silent as to accessing a reference database that includes data associated with both existing and enhanced communications services. Also, Applicants’ specification also fails to disclose or suggest the recited estimator. Accordingly, the rejection is improper and should be withdrawn.

The rejection is improper for the additional reason that Kotler fails to disclose an application tailoring module that modified a standard adoption curve to obtain an adjusted adoption curve. As pointed above in Section B.1.a, the Office Action further concedes that Kotler does not disclose adjusting a standard adoption curve. Furthermore, it has been previously shown that neither Mahajan, Bohlin, Weerahandi, Dorf nor Porter discloses nor

suggests altering Kotler to adjust a standard adoption curve. Accordingly, the rejection is improper and should be withdrawn.

It is noted that the Office Action on page 6 asserts that it would have been obvious to automate the method of Kotler. Applicants traverse the assertion in that claim 1 is silent as to automating the method.

For the above reasons, claim 17 is not rendered obvious by Kotler and the other cited art and so the rejection is improper and should be withdrawn.

The rejections of claims 18-23 are improper for the additional reason that none of the references discloses or suggests the various ways of adjusting the standard adoption curve as recited in the claims. The Office Action recites Mahajan, Bohlin, Weerahandi, Dorf and Porter for disclosing the recited ways of adjusting. However, as pointed out above in Section B.1.a, each reference does not reveal any adjustment of a standard adoption curve. Since there is no suggestion in either Mahajan, Bohlin, Weerahandi, Dorf or Porter to alter Kotler to adjust a standard adoption curve in the manner recited in claims 18-23, the rejections of the claims are improper and should be withdrawn.

The rejections of claims 25 and 26 are improper. Claims 25 and 26 recite additional limitations concerning an estimator that generates an estimated revenue value (claim 25) or estimated cost value (claim 26) as a function of a geographic region. The Office Action has not recited one reference for the proposition of estimating revenue or cost values as a function of a geographical region. Accordingly, the rejection is improper. In addition, the claims recite making their estimations based on the adjusted adoption curve. As mentioned above, none of the references discloses or suggests using an adjusted adoption curve. Without such suggestion, the rejection is improper and should be withdrawn.

Note that claim 17 has been amended to replace “communication” and “estimating module” with “communications” and “estimator,” respectively. Since the amendments either use language that was present in the original claim or correct obvious typographical errors, the scope of the claim under the doctrine of equivalents is unaffected or the amendments are not related to patentability per *Festo*.

To the extent that the amendments to claims 18-23, 25 and 26 broaden the claims, the scope of the claims under the doctrine of equivalents is unaffected per *Festo*.

2. **Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend, Weerahandi and Kroenke**
a. **Claim 8**

Claim 8 was rejected under 35 U.S.C. § 103 as being obvious in view of Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend, Weerahandi and Kroenke. Applicants traverse this rejection. In particular, claim 8 depends directly on claim 1. As pointed out above in Section B.1.a, Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend and Weerahandi do not suggest altering Kotler so as to 1) accept “user-specific input into a computer relating to an existing wireless communications service and the enhanced wireless communications service”, 2) use a user-specific input that includes a wireless application supported by an enhanced wireless communications service, 3) access a reference database that includes cost data values associated with an enhanced wireless communications service and a revenue data value associated with an existing wireless communications service, 4) adjusting a standard adoption curve to obtain an adjusted adoption curve and 5) estimate a potential revenue value by generating a revenue estimate based on an adjusted adoption curve. Since Kroenke does not suggest altering Kotler to implement the five items mentioned above, the rejection is improper and should be withdrawn.

Note that claim 8 has been amended to delete “the step” and “step” and to replace “the contents” with “content”. Since the amendments either broaden the claim or use language that does not change the intended scope or meaning of the claim, the scope of the claim under the doctrine of equivalents is unaffected or the amendments are not related to patentability per *Festo*.

b. Claim 24

Claim 24 was rejected under 35 U.S.C. § 103 as being obvious in view of Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend, Weerahandi and Kroenke. Applicants traverse this rejection. In particular, claim 24 depends directly on claim 17. As pointed out above in Section B.1.b, Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend and Weerahandi do not suggest altering Kotler so as to have 1) a user input interface “for accepting user-specific input relating to an existing wireless communications service and the enhanced wireless communications service”, 2) a user-specific input that includes a wireless application supported by an enhanced wireless communications service as recited in claim 17, 3) an estimator that accesses a reference database that includes cost data values associated with an enhanced wireless communications service and a revenue data value associated with an existing wireless communications service and 4) an application tailoring module that modified a standard adoption curve to obtain an adjusted adoption curve. Since Kroenke does not suggest altering Kotler to implement the four items mentioned above, the rejection is improper and should be withdrawn.

Note that claim 24 has been amended to replace “the contents” with “content”. Since the amendment either broadens the claim or uses language that does not change the intended scope or meaning of the claim, the scope of the claim under the doctrine of equivalents is unaffected or the amendments are not related to patentability per *Festo*.

3. **Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend, Weerahandi and Finnerty**
a. **Claim 11**

Claim 11 was rejected under 35 U.S.C. § 103 as being obvious in view of Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend, Weerahandi and Finnerty. Applicants traverses this rejection. In particular, claim 11 depends directly on claim 1. As pointed out above in Section B.1.a, Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend and Weerahandi do not suggest altering Kotler so as to 1) accept “user-specific input into a computer relating to an existing wireless communications service and the enhanced wireless communications service”, 2) use a user-specific input that includes a wireless application supported by an enhanced wireless communications service, 3) access a reference database that includes cost data values associated with an enhanced wireless communications service and a revenue data value associated with an existing wireless communications service, 4) adjusting a standard adoption curve to obtain an adjusted adoption curve and 5) estimate a potential revenue value by generating a revenue estimate based on an adjusted adoption curve. Since Finnerty does not suggest altering Kotler to implement the five items mentioned above, the rejection is improper and should be withdrawn.

Note that claim 11 has been amended to delete “step”. Since the amendment broadens the claim, the scope of the claim under the doctrine of equivalents is unaffected per *Festo*.

b. **Claim 27**

Claim 27 was rejected under 35 U.S.C. § 103 as being obvious in view of Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend, Weerahandi and Finnerty. Applicants traverses this rejection. In particular, claim 27 depends directly on claim 17. As pointed out above in Section B.1.b, Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan,

Townsend and Weerahandi do not suggest altering Kotler so as to have 1) a user input interface “for accepting user-specific input relating to an existing wireless communications service and the enhanced wireless communications service”, 2) a user-specific input that includes a wireless application supported by an enhanced wireless communications service as recited in claim 17, 3) an estimator that accesses a reference database that includes cost data values associated with an enhanced wireless communications service and a revenue data value associated with an existing wireless communications service and 4) an application tailoring module that modified a standard adoption curve to obtain an adjusted adoption curve. Since Finnerty does not suggest altering Kotler to implement the four items mentioned above, the rejection is improper and should be withdrawn.

4. Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend, Weerahandi and Heizer

Claims 12-16 were rejected under 35 U.S.C. § 103 as being obvious in view of Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend, Weerahandi and Heizer.¹ Applicants traverses this rejection for various reasons. In particular, claims 12 and 13 depend directly or indirectly on claim 1. As pointed out above in Section B.1.a, Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend and Weerahandi do not suggest altering Kotler so as to 1) accept “user-specific input into a computer relating to an existing wireless communications service and the enhanced wireless communications service”, 2) use a user-specific input that includes a wireless application supported by an enhanced wireless communications service, 3) access a reference database that includes cost data values associated

¹ It is noted that page 23 of the Office Action only lists claims 12 and 13 as being rejected based on Kotler, Disclosed Prior Art, Bohlin, Dorf, Porter, Mahajan, Townsend, Weerahandi and Heizer. However, pages 26-30 of the Office Action contain rejections of claims 14-16 based on the same references. Accordingly, it will be assumed that claims 14-16 were meant to be listed on page 23 of the Office Action as well.

with an enhanced wireless communications service and a revenue data value associated with an existing wireless communications service, 4) adjusting a standard adoption curve to obtain an adjusted adoption curve and 5) estimate a potential revenue value by generating a revenue estimate based on an adjusted adoption curve. Since Heizer does not suggest altering Kotler to implement the five items mentioned above, the rejection is improper and should be withdrawn.

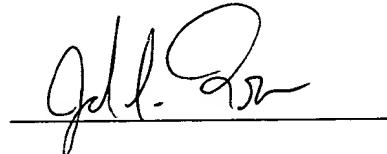
The rejection of claim 14 is improper for the additional reason that the art cited fails to suggest altering Kotler to have “a bar chart of different variable factors potentially impacting net present value of a business based on the enhanced wire communications service.” The rejection relies on Heizer and Townsend as suggesting the recited bar chart. However, there is no suggestion in the references to form a bar chart of different variable facts that potential impact a net present value of a business based on an enhanced wire communications service. Without such suggestion, the rejection is improper and should be withdrawn.

In summary, Applicants have shown that the rejections have no merit because the cited references do not suggest the inventions claimed. The rejections are improper for the additional reason that they were based on indiscriminately combining prior art without being based on proper motivation. *Akzo N.V. v. United States ITC*, 808 F.2d 1471, 1 USPQ2d 1241 (Fed. Cir. 1986). The indiscriminate combining of prior art is evidenced by the fact that the Office Action repeatedly cited multiple pages of a reference as supporting its position. This left it up to Applicants to guess what specific paragraphs/sentences/embodiments were being relied on to reject the claims. This is unfair to the Applicants in that they do not know what specific embodiments are combined and how they are being combined. Accordingly, Applicants demand if the rejections are repeated that the next Office Action provide more specificity as to what portions of the references are being relied on to reject the claims.

CONCLUSION

In view of the arguments above, Applicants respectfully submit that all of the pending claims 1-27 are in condition for allowance and seeks an early allowance thereof. If for any reason, the Examiner is unable to allow the application in the next Office Action and believes that an interview would be helpful to resolve any remaining issues, he is respectfully requested to contact the undersigned attorneys at (312) 321-4200.

Respectfully submitted,



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